IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

WP(C).No. 13413 of 2007(V)

CMA.27/2007 of ADDL. DISTRICT COURT, NORTH PARAVUR
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PETITIONERS:
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1. **CICILY MATHAPPAN, AGED 55,**
   W/O.MATHAPPAN, KALLARAKKAL HOUSE,
   CHUNDANIKKAVU BHAGOM,KIDAMANGALAM MURIYIL,
   PARAVOOR VILLAGE, ERNAKULAM DISTRICT.

2. **ALPHONSA ANTONY, AGED 49,**
   W/O.ANTONY, PADAMATTUMMEL HOUSE,
   KOOTTUKADU MURIYIL, CHENNAMANGALAM VILLAGE,
   ERNAKULAM DISTRICT.

BY ADV. SRI.C.CHANDRASEKHARAN

RESPONDENTS:
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1. **SIMON, AGED 93 YEARS,**
   S/O.IYPE, THEVARKAD MURI, VARAPUZHA PAKUTHY,
   NOW RESIDING AT MUKKATH PONNAKKARA, KUMBALAPARAMBU ROAD, EDAPPALLY, ERNAKULAM DISTRICT.

2. **FRANCIS, AGED 46, S/O.SIMON,**
   MUKKATH PONNAKKARA, KUMBALAPARAMBU ROAD,
   EDAPPALLY, ERNAKULAM DISTRICT.

3. **SABIN, AGED 34, S/O.SIMON,**
   MUKKATH PONNAKKARA, KUMBALAPARAMBU ROAD,
   EDAPPALLY, ERNAKULAM DISTRICT.

BY ADV. SRI.PAUL K.VARGHESE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.13413 OF 2007

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Dated this the 24th day of May, 2007

JUDGMENT

This writ petition is preferred seeking a writ of certiorari to quash Exts.P5 and P6. Petitioners herein had filed a suit for setting aside a document on the ground of incapacity, fraud, coercion, etc. It is the case of the plaintiffs that the father had executed a Will and subsequently using undue influence and also exploiting the incapacity of the father to understand things a sale deed had been got executed and therefore prays for an injunction in the suit.

2. Both the courts below found that the plaintiffs are not entitled to an interim relief as prayed for and dismissed the applications. It is challenging that orders, the present writ petition is filed.

3. I had perused the entire case records and it is true that the father had executed a Will. It is equally true that the father had executed assignment deed as well. In order to satisfy the conscience of the court the father appeared before court and filed an affidavit before court stating that he had executed the document. The courts were satisfied that prima facie

the father was able to understand the consequences of his action as well as his voluntary nature in executing the document. The courts rightly refused the prayer for injunction and I do not find any ground to interfere with that decision.

Therefore the writ petition lacks merit and the same is dismissed. It is made clear that the trial court has to decide the matter independently untrammelled by any of of the observations made in this judgment or in the orders passed by the trial court or the appellate court.

M.N.KRISHNAN, JUDGE

Cdp/-